



STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

Final Report

Relating to

**Uniform Military and Overseas Voters Act**

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NEW JERSEY LAW REVISION COMMISSION

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## Introduction

In 2010, the National Conference of Commissioners on Uniform State Laws (NCCUSL), now known as the Uniform Law Commission (ULC), approved and recommended for enactment in all states the Uniform Military and Overseas Voters Act (UMOVA). As the Prefatory Note explains, the ULC determined that despite enactment of federal legislation to facilitate the ability of military personnel and overseas civilians to vote in American elections<sup>1</sup>, “over five million military personnel and overseas civilians face a variety of legal and logistical obstacles to participating in American elections.”

The obstacles to voting include difficulties in registering to vote from abroad; ballots or ballot applications that never arrive; frequent address changes; slow mail delivery times to and from overseas citizens -- especially military personnel; failures to complete absentee voting materials properly, including noncompliance with notarization or verification requirements that can be difficult to meet abroad; and difficulties in obtaining information about the candidates and the issues. In addition, variations in election procedures among states complicate procedures implemented under federal law and make it difficult for consular officials, the United States military, and non-governmental voting assistance groups to give standard advice to these voters.

In confronting these problems, the ULC stated two primary purposes for UMOVA. The first is to enhance current law by extending to state elections the assistance and protections for military and overseas voters that currently are found in federal law and now cover only federal elections. The second is to make uniform and consistent those voting procedures used by military personnel and overseas civilian United States citizens. UMOVA focuses on giving voters adequate time to request, receive and return overseas ballots and requiring the availability of electronic transmission of unvoted ballots and voting materials in order to achieve this purpose.

As of the date of this report, UMOVA has been adopted in the District of Columbia and six states: Colorado, Nevada, North Carolina, North Dakota, Oklahoma and Utah.<sup>2</sup> According to a July 2011 article in *Electionline Weekly*<sup>3</sup>, North Carolina has

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<sup>1</sup> Such federal legislation includes the *Uniformed and Overseas Citizens Absentee Voting Act of 1986* (“UOCAVA”), 42 U.S.C. §1973ff, which requires that the states and territories allow members of the United States uniformed services and merchant marine, their family members, and United States citizens residing outside the United States, to register and vote absentee in elections for Federal offices. There are other provisions of the law pertaining to implementation of voting procedures. The UOCAVA was amended with enactment of the *Military and Overseas Voter Empowerment Act of 2009* (“MOVE Act”). MOVE requires states, among other things, to (1) establish procedures for absentee military and overseas voters to obtain from the states federal election voter registration applications and absentee ballot applications by mail and electronically, and (2) ensure that absentee military and overseas voters have time to vote.

<sup>2</sup> In 2012, UMOVA was introduced in the legislatures of California, Hawaii, Pennsylvania, Tennessee and Virginia.

<sup>3</sup> *Electionline Weekly* is produced through the University of Minnesota, Humphrey School of Public Affairs and is a Project of Program for Excellence in Administration that is supported by The Pew Charitable Trust.

the 5<sup>th</sup> highest active duty military population in the United States and is the first state among those ranking in the top third to adopt UMOVA. The Federal Voting Assistance Program of the Department of Defense also supports UMOVA principles. Non-governmental voting assistance organizations, such as the Alliance for Military and Overseas Voting Rights and the Overseas Vote Foundation, and other public interest organizations, such as the Pew Center on the States, also support the adoption of UMOVA, as does the American Bar Association.

The Commission shares UMOVA goals of facilitating greater overseas voter participation in all elections. However, upon review of current New Jersey law -- specifically the *Overseas Residents Absentee Voting Law*, N.J.S. 19:59-1 et seq., (ORAVL)<sup>4</sup> -- and informal discussion with the Director of the Division of Elections, the Commission determined that some of the concerns addressed by UMOVA are already rectified by ORAVL. For example, ORAVL fosters the use by overseas voters of electronic transmission methods to access election materials and apply for absentee ballots. New Jersey state law also provides for the use by election officials of electronic transmission methods to distribute voting materials and ballots to overseas voters. ORAVL, also consistent with UMOVA, permits the use of the Federal Write-in Absentee Ballot to vote for all elections. In addition, as required by the MOVE Act and recommended by UMOVA with regard to each state's election official, ORAVL now requires that the county clerk send eligible overseas voters the requested overseas ballots at least 45 days before the day of the election and thereafter by electronic means using the telephone number or electronic address supplied by the voter for that purpose.

Since ORAVL (though recently amended) has been in place since 1976 and is a well-integrated part of New Jersey voting practices and procedures, rather than recommending the adoption of UMOVA in its entirety, the Commission recommends the incorporation into ORAVL of key UMOVA concepts that to this date have not been addressed in New Jersey law. These concepts include expanding the definition of "overseas voter" to include those voters who are eligible to vote in New Jersey but were not born here, and, consistent with *The Vote by Mail Law*, N.J.S. 19:63-1 et seq., expressly permitting the use of the Federal Postcard Application Form in order to register to vote in any election (not just a federal election).

The Commission is mindful that concerns still exist regarding the security and integrity of the use of electronic transmission for *voted* ballots. Studies have shown that e-mail voter delivery systems can be hacked into. Notably, UMOVA does not require the use of electronic means for transmitting voted ballots for this very reason; neither does

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<sup>4</sup> In 1976, the *Overseas Residents Federal Election Absentee Voting Law*, mandated by UOCAVA, was adopted in New Jersey to facilitate the voting, by absentee ballot, of overseas United States citizens in federal elections. In 2008, the law was amended to allow overseas voters greater participation in the electoral process by permitting them to vote by absentee ballot in any election held in the State (federal, state or local), and by expanding the method of transmitting overseas ballots to include any electronic means. At that time the word "federal" was removed from the title and the text, and the law came to be known as the Overseas Residents Absentee Voting Law, or ORAVL. ORAVL was further amended effective in July of 2011, as will be discussed further in the text. See also *The Vote by Mail Law*, N.J.S. 19:63-1 et. seq., which covers all mail-in voters, including overseas voters.

ORAVL require its use, although ORAVL permits voting by electronic means in section 19:59-14 subject to the requirements of other sections of the law that also require the return by mail of an original signed paper ballot. The suggested revisions in this report do not alter the current State law requirements for returning voted ballots. See N.J.S. 19:59-10c. and N.J.S. 19:59-15.

Notably, section 19:59-5 of ORAVL – pertaining to the form of application for an overseas ballot – was revised not because of UMOVA but because the United States Citizens Identity and registration Card (Form FS 225) appears no longer to be in use as a form of proof of United States citizenship.

Not surprisingly, as federal and state laws change, further changes to New Jersey’s voting laws also may become necessary. The recent amendment to ORAVL requiring a county clerk to provide to an overseas voter a ballot and voting materials at least 45 days in advance of an election, was the result of New Jersey’s effort, along with other states who also amended their own laws, to conform to the requirements of the MOVE Act (see, e.g., P.L. 2011, c. 37, effective July of 2011), although the New Jersey amendment exceeds the MOVE Act requirement by applying the time frame to all elections, not just federal elections. Now that New Jersey permits voting by mail ballot for all voters (not just those who are overseas at election time), New Jersey voting laws eventually may need further consolidation and revision in order to make voting procedures more accessible and understandable for all voters registered to vote in this State.

A summary of the changes made to existing New Jersey law is set forth below. The proposed revised sections of ORAVL follow thereafter.

### **Summary of Changes Made from Existing New Jersey Law**

#### ***1. Definitions added (N.J.S. 19:59-2).***

Current New Jersey law does not include definitions for the terms “military service”, “federal postcard application”, “federal write-in absentee ballot” or “dependent”. These terms are now defined. A definition of “election” has also been added that references N.J.S. 19:1-1 and specifically includes state and local, as well, as federal elections. Notably, changes also have been made to the definition of “overseas voter” based on UMOVA. See section 2 below.

#### ***2. Definition of overseas voter modified (19:59-2).***

The definition of “overseas voter” is modified in significant ways in accordance with UMOVA, as follows:

*a. Spouses and legally recognized partners of persons in military service included.*

Although understood to be within the scope of the definition of “overseas voter” in accordance with federal law, the proposed definition of “overseas voter” expressly includes “spouses”, “partners in civil union”, “domestic partners” and “dependents” of persons in military service if the person’s active duty or service are the reasons the

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spouse or partner or dependent is absent from the person's New Jersey residence on the date of the election.

*b. Voters born outside of the United States included.*

Voters who are citizens born outside of the United States are now included in the definition if the last place where the person's parent or legal guardian was or would have been eligible to vote before leaving the United States is New Jersey, and if the voter has not previously registered to vote elsewhere in the United States. To further this change to the definition of "overseas voter", changes were also made to sections 19:59-3, 19:59-4 and 19:59-5, as noted.

*c. Overseas voters with a residence in New Jersey are covered.*

The requirement that an overseas voter "not maintain a residence in the United States" has been eliminated to include within the definition those voters who are abroad but still have a home in New Jersey, such as students, professors on sabbatical, and travelers who extend their stay overseas for any reason. Without this change, citizens who immediately prior to their departure were domiciled in New Jersey and are merely traveling abroad or temporarily living overseas are not covered by ORAVL if they continue to maintain a residence in the United States. At the same time, the expanded definition would also cover individuals who may have dual residences (one of which is in New Jersey and the other of which is overseas) and travel between residences. If an overseas voter is domiciled in New Jersey, in accordance with the requirements of ORAVL, having more than one residence will not preclude the overseas voter from voting in a New Jersey election.

*d. References to cards of identity and registration eliminated.*

The definition of "overseas voter" has been modified to eliminate reference to cards of identity and registration, which appear no longer to be in use. See comment to section 19:59-5. References to passport cards, however, and other proofs of citizenship are now referenced in the definition and in section 19:59-5.

With the above changes to the definition of "overseas voter", New Jersey law, like UMOVA, would cover a broader range of overseas voters, consistent with the New Jersey and federal public policy of enhancing absentee voter participation in the electoral process.

**3. Applications for absentee ballots (N.J.S. 19:59-4); (N.J.S. 19:59-5).**

The timeframe within which the applicant's completed application for an overseas ballot shall be received electronically has been changed from "on or before the fourth day preceding the election" to "by 3 p.m. on the day preceding the election." Additionally, modifications have been made to the form of the application (N.J.S. 19:59-5), which are self-explanatory. Notably, the proposal now includes the United States Passport card as a method for proof of citizenship. Conversely, the Identity and Registration Card (Form FS 225) is deleted as such proof. According to federal government websites, the Identity and Registration Card has not been in use since September 1971. However, a Certificate of Citizenship is also a valid proof of United States citizenship; it is also included as

another type of proof in the statute. Subsection d. has been added to section 19:59-5 to accommodate other forms of identification that may also appropriately serve as methods of proof of citizenship, such as a Consular Registration of Birth Abroad and/or a birth certificate for a person born in the United States.

**4. *Use of federal postcard application (N.J.S. 19:59-4); (N.J.S. 19:59-5).***

The proposed modifications permit use of a federal postcard application to apply for an overseas ballot or to register to vote in any election. The form of the federal postcard application is prescribed by federal law and would not conflict with current New Jersey requirements (see N.J.S. 19:59-5). Current ORAVL permits the use of a federal postcard application to apply for an overseas ballot or to register to vote *only* in a federal election. This is inconsistent with *The Vote by Mail Law*, N.J.S. 19:63-1, *et. seq.* enacted in 2009, specifically section 19:63-3, which permits a voter who is a member of the armed forces of the United States to use a federal postcard application form to apply for a mail-in ballot in *any* election.

**5. *New proposed sections (N.J.S. 19:59-17); (N.J.S. 19:59-18); (N.J.S. 19:59-19).***

The following new sections are proposed:

a) a proposed new section 19:59-17, which is adopted substantially in the form set forth in subsection a. of Section 15 of UMOVA, addresses the privacy concerns regarding use of a voter's electronic address.

b) a proposed new section 19:59-18, which is adopted substantially in the form set forth in Section 17 of UMOVA, provides that a voter's mistake or omission in the completion of a document that does not prevent determining whether a covered voter is eligible to vote will not invalidate the document. Failure to satisfy a non-substantive requirement, such as using the wrong sized paper or envelopes, also does not invalidate the document. And an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party must be accepted as a valid vote. Incorporation of this section will protect overseas voters from inadvertent voter error.

c) a proposed new section 19:59-19, which is adopted substantially in the form set forth in Section 18 of UMOVA, permits a court to issue or grant appropriate equitable relief to ensure substantial compliance with, or enforcement of, ORAVL on application either by a covered voter alleging a grievance under the act or by a New Jersey election official.

**6. *Other miscellaneous changes (Section 19:59-10); (Section 19:59-12); (Section 19:59-13).***

The following additional changes are proposed:

a) section 19:59-10 (Instructions for completion of ballot) now includes reference to the person's choice regarding a public question as public questions frequently appear on New Jersey state election ballots;

b) section 19:59-12 (Request for overseas ballot for all elections during a calendar year) directs that the transmission method for sending the ballot to the voter shall be that first requested by the voter unless the voter instructs otherwise; and

c) section 19:59-13 (Rules and regulations) eliminates the gender-specific reference.

**19:59-1. Short title amended.**

This act shall be known and may be cited as the “Revised Overseas Residents Absentee Voting Law.”

COMMENT

This section is changed to reflect that revisions have been made to the existing statute. Prior to this report, the existing statute was most recently amended effective July of 2011.

**19:59-2. Definitions.**

As used in this act:

a. “Dependent” means an individual recognized as a dependent by a military service.

b. “Election” has the same meaning as set forth in R.S. 19:1-1 and includes a federal, state or local election.

~~e.~~ c. “Electronic means” means any transmission made by an electronic telefacsimile machine or a similar device or by any other form of electronic transmission including, but not exclusive to electronic mail, that transports an authentic copy of a document from one user to another.

~~e.~~ d. “Federal election” means any general, special or primary election held for the purpose of nominating or electing any candidate for the office of President or Vice President of the United States, Presidential elector, United States Senator or member of the United States House of Representatives.

e. “Federal postcard application” means the application prescribed under Pub.L. 99-410, title I, Sec. 101, as amended, of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff(b)(2).

f. “Federal write-in absentee ballot” means the ballot described in Pub.L. 99-410, title I, Sec. 103, as amended, of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff-2.

g. “Military service” means active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States; the Merchant Marine; the commissioned corps of the Public Health Service or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or the National Guard and State militia.

d. h. “Overseas voter” means:

(1) any person in military service, or that person’s spouse, partner in civil union or domestic partner, or dependent, who, by reason of the person’s active duty or service, is (a) in the case of the person, absent on the date of an election from the place of residence in New Jersey where the person is or would be qualified to vote, or (b) in the case of the person’s spouse, partner in civil union or domestic partner, or dependent, absent on the date of any election from the place of residence in New Jersey where that spouse, partner in civil union or domestic partner, or dependent, is or would be qualified to vote; ~~and or~~

(2) any United States citizen of the United States residing abroad who (1)

(A) immediately prior to his departure from leaving the United States (i) was domiciled and last registered to vote or last eligible to register and vote in New Jersey and (a) was registered to vote, or had all the qualifications to register and vote, in New Jersey or (b) had all the qualifications to register and vote in New Jersey other than or (ii) was eligible to register and vote in New Jersey but for having attained 18 years of age, the requirement of which has since been met attained that age; or (e) (iii) would have been eligible to register and vote in New Jersey, but for residence, have the qualifications to register and vote in New Jersey; and (2)

(B) does not maintain a residence in the United States and is not registered or qualified to vote elsewhere in the United States; and (3)



(C) holds a valid passport or passport card of identity and registration or other proof of citizenship issued under authority of the Secretary of State of the United States;  
or

(3) any citizen of the United States who was born outside of the United States, is not described in paragraph (2) above, and, except for New Jersey’s residency requirement, otherwise satisfies New Jersey’s voter eligibility requirements, if

(A) the last place where a parent or legal guardian of the voter was, or under this statute would have been, eligible to vote before leaving the United States is within New Jersey; and

(B) the voter has not previously registered to vote elsewhere in the United States.

b.i. “Residing abroad” means residing outside the United States.

a.j. “United States” means each of the several states, the District of Columbia, Commonwealth of Puerto Rico, Guam, American Samoa and the United States Virgin Islands; the term does not mean or include the Canal Zone or any other territory or possession of the United States.

#### COMMENT

While the section substantially continues the original provision, definitions for the new terms “federal postcard application”, “federal write-in absentee ballot”, “military service” and “dependent” are adopted, verbatim, from the Uniform Military and Overseas Voter Act (UMOVA). UMOVA was promulgated by the National Conference of Commissioners on Uniform State Laws (now the Uniform Law Commission) in July, 2010. The definition of “overseas voter” has been modified to (1) include the spouses, partners in civil union, domestic partners and dependents of persons in military service; (2) accommodate the gap in the current law for those individuals who are born to United States citizens outside the United States and who don’t have a last place of residence here; and (3) clarify language. In addition, the requirement that the voter not maintain a residence in the United States has been eliminated from the definition of “overseas voter” because this requirement excluded from the law those New Jersey citizens who are living abroad but nonetheless maintain homes in New Jersey, e.g., students studying abroad, missionaries, tourists whose visits are unexpectedly extended, or professors on sabbatical. The definition now makes no distinction between overseas voters merely traveling abroad, voters temporarily living overseas, and voters permanently residing overseas.

#### **19:59-3. Overseas voter; application for and vote by absentee ballot.**

Upon compliance with the provisions of this act, P.L. 1976, c. 23 (C:19:59-1 et seq.) any person meeting the qualifications of an “Overseas voter” may register to vote and may apply for and vote by absentee ballot in any election held in the election district

of this State in which the voter, or in the case of an overseas voter who was born outside of the United States in accordance with section 19:59-2h.(3), in which the voter's parent or legal guardian, was formerly domiciled.

COMMENT

While the section continues the original provision, language is added to accommodate the changes to the definition of "overseas voter" in section 19:59-2h. (3).

**19:59-4. Request for application; qualification to vote.**

a. Requests for an application to vote in an election as an overseas voter may be made by or on behalf of an applicant to the county clerk of the county in which the applicant, or in the case of an overseas voter who was born outside of the United States in accordance with section 19:59-2 h.(3), in which the applicant's parent or legal guardian, was formerly domiciled, or to the Secretary of State of New Jersey if the applicant does not know the county of ~~the applicant's~~ former domicile.

b. ~~All such~~ applications shall be forwarded, in accordance with the voter's request, ~~to such voters by air mail or electronic means, if so requested by the voter.~~ Any overseas voter requesting that an application for a ballot be sent to that voter by electronic means shall ~~supply to the Secretary of State or the county clerk, as appropriate,~~ include in the request the telephone number and location to which the application is to be sent or the electronic address of the voter, as may be appropriate as well as, if known, the address where the voter, or the voter's parent or legal guardian, as appropriate, was domiciled before leaving the United States. ~~In order to qualify an applicant to be sent for a ballot to be sent by air mail in order to vote in an election,~~ the applicant's completed application shall be received by the appropriate county clerk or the Secretary of State on or before the thirtieth day preceding the election. ~~In order to qualify an applicant to be sent for a ballot to be distributed by electronic means in order to vote in an election,~~ the applicant's completed application shall be received by the appropriate county clerk or the Secretary of State ~~on or before the fourth day by 3 p.m. on the day~~ preceding the election.

~~b. c.~~ An overseas voter may use the federal postcard application form to register to vote or to apply for an overseas ballot for any federal election. The voter may send the form by air mail or electronic means to either the appropriate county clerk or the

Secretary of State and, in the case of the use of an federal postcard application for a ballot, may request that the ballot be sent by air mail or electronic means. Any voter sending the form by electronic means shall also mail simultaneously the federal postcard application form to the appropriate county clerk or the Secretary of State. If that voter is not already registered, ~~Any~~ federal postcard application for a ballot sent by an overseas voter and received by a county clerk or the Secretary of State shall also be considered a request for registration ~~if that voter is not already registered.~~

COMMENT

Changes are made for clarity and to accommodate the modifications made to the definition of “overseas voter” as appear in section 19:59-2. A federal postcard application may be used by an overseas voter to register to vote or to apply for an overseas ballot for any election, not just a federal election. See newly designated subsection c. above. This modification clarifies the law and makes it consistent with N.J.S. 19:63-3(c).

**19:59-5. Application form; contents; information for applicant.**

a. An application for an overseas ballot (other than by use of a federal postcard application which has its own prescribed form) shall be in substantially the following form:

APPLICATION FOR AN OVERSEAS BALLOT

I, the undersigned, certify the following as a basis for an application as citizen of the United States residing outside the United States to receive a ballot to be voted at the election to be held on ..... (date of election) for ..... (fill in elected office or public question, or both) ~~that is to say:~~

1. I am a citizen of the United States;
2. I presently reside at ..... (if mail should be addressed other than to my residence, also provide address for mail);
3. I was born on ..... (month, day, year)
4. ~~a-~~I hold a:
  - a. valid U.S. Passport # ....., dated ....., or
  - b. valid U.S. Passport card #....., dated....., or
  - c. ~~I hold a United States Citizens Identity and Registration Card (Form FS 225) dated ..... issued by ..... (name and location of U.S. Embassy or Consulate.)~~ valid Certificate of Citizenship (Form N-600), dated....., or
  - d. other valid form of identification recognized as such under federal or state law.

5. a. Immediately prior to taking up residence abroad, I was domiciled in New Jersey and resided at .....(street address), ..... (municipality), ..... (county). (If formerly registered to vote from that address check here (.....)) or

b. I was born outside of the United States and my parent or legal guardian, before leaving the United States, was last domiciled in New Jersey, residing at ..... (street address), ..... (municipality), ..... (county).

6. I ~~do not maintain a domicile in the United States and~~ am not registered, entitled or applying to vote in any state other than New Jersey.

7. I understand that any false statement knowingly made in this application subjects me to the penalties provided by law for fraudulent voting.

..... Applicant  
(Signature)

Dated:

Applicant  
(Print or type name)

b. There shall also be sent to the applicant by air mail or electronic means such instructions and portions of the law or regulations as the Secretary of State shall direct.

c. Any overseas voter requesting that a ballot be sent to that voter by electronic means shall indicate on the application for the ballot the telephone number and location to which the ballot is to be sent or the electronic address of the voter, as may be appropriate.

COMMENT

Changes are made to accommodate the modifications made to the definition of “overseas voter” as appear in section 19:59-2. Reference is added to the newly introduced United States Passport Card, which is proof of United States citizenship and identity although not valid for all international travel (it is only valid for border crossings with Canada, Mexico, the Caribbean and Bermuda). In addition, reference to the U.S. Citizens Identity and Registration Card (also known as the Certificate of Identity and Registration) (FS 225) has been deleted as the form was abolished and has not been in use since September of 1971. Subsection d. is added to accommodate other proof of citizenship that is not specifically noted, including forms of proof that are (or may become) authorized by federal and state law. Current examples of other forms of identification that may serve as proof of citizenship are a Consular Registration of Birth Abroad and, for a person born in the United States, a birth certificate.

The statute references a “federal postcard application” to clarify existing law. See The Vote by Mail Law, N.J.S. 19:63-1 *et seq.*, specifically, N.J.S. 19:63-3(c).

**19:59-6. Approval; lists; inspection; delivery to county board.**

Each county clerk, upon receipt of an application for an overseas ballot, including a federal postcard application, shall determine whether or not the applicant is qualified to vote such a ballot, make a list of those applications approved and disapproved, which list

shall be open to inspection by election officials and the public, and shall forward an overseas ballot to each person whose application is approved. For each voter whose application is approved, the county clerk shall deliver to the county board of elections the completed application form for retention by the board for signature comparison with that on the certificate on the inner envelope containing the ballot upon its receipt.

COMMENT

Changes are made to accommodate modifications made to section 19:59-4 c., consistent with N.J.S. 19:63-3(c), which permit the use of a federal postcard application to apply for an overseas ballot or register to vote. No other changes are made to this section.

**19:59-7. Overseas voter ballot; form.**

The county clerk shall prescribe the form of the overseas ballot.

COMMENT

No changes are made to this section.

**19:59-8. Instructions and notice; delivery.**

a. Each county clerk shall send by air mail, with each overseas ballot transmitted by such means, appropriate printed instructions for its completion and return, together with an inner and outer envelope similar to that required as to civilian absentee ballots with a legend on the inner envelope stating “Overseas Ballot.”

b. Each county clerk shall send to each overseas voter requesting that an overseas ballot be sent to that voter by electronic means all appropriate printed instructions for its completion and return. The printed instructions sent to each such voter shall include a certificate substantially the same as provided for in section 9 of P.L. 1976, c. 23 (C.19:59-9).

c. The printed instructions sent with each overseas ballot, including instructions sent by electronic means, shall include a copy of the following notice:

PENALTY FOR FRAUDULENT VOTING

Any person who knowingly violates any of the provisions of the Overseas Residents Absentee Voting Law, or who, not being entitled to vote thereunder, fraudulently votes or attempts to vote thereunder or enables or attempts to enable another person, not entitled to vote thereunder, to vote fraudulently thereunder or who prevents or attempts to prevent by fraud the voting of any person legally entitled to vote under the law, shall be guilty of an indictable offense, and upon conviction thereof shall be subject, in addition to such other penalties as are authorized by law, to disenfranchisement unless and until pardoned or restored by law to the right of suffrage.

COMMENT

No changes are made to this section.

**19:59-8.1. Request by electronic means for application for an overseas voter ballot; procedure.**

Whenever a county clerk receives a request by electronic means from an overseas voter that an overseas ballot be sent to that person by electronic means, the county clerk shall verify the voter’s eligibility to vote as an overseas voter in the State and the county desired. If the overseas voter is eligible to vote therein, the county clerk shall send the ballot to the voter at least 45 days before the day of the election and thereafter by electronic means using the telephone number or electronic address supplied by the voter for that purpose. If the overseas voter is not eligible to vote in the State or the county desired, notice of noneligibility shall be provided to the voter by electronic means as soon as practicable after the receipt of the request.

COMMENT

No changes are made to this section.

**19:59-9. Certificate on ballot; form.**

Upon the margin of the flap of the inner envelope to be sent to an overseas voter shall be printed a certificate substantially as follows:

I, the undersigned, residing at ..... am the person who applied for, received and voted the enclosed Overseas Ballot.

Dated: .....

..... Voter (SIGNATURE)

..... Voter (PRINT or type name)

COMMENT

No changes are made to this section.

**19:59-10. Instructions for completion of ballot.**

a. For overseas ballots other than such ballots sent to the voter by electronic means, the procedure for completing the ballot shall be as follows:

Upon completion of the ballot by indicating the voter's choice of candidates for the offices named or the voter's choice regarding a public question, or both, the ballot shall be placed in the inner envelope and sealed. Upon completion and signing in the voter's handwriting the certificate attached to the inner envelope, the inner envelope shall be placed in the outer envelope, which when sealed shall be mailed postage prepared to the county board of elections whose address is printed thereon.

b. For overseas ballots sent to the voter by electronic means, the procedure for completing the ballot shall be as follows:

After the ballot is received and completed by indicating that person's choice of candidates for the offices named or that person's choice regarding a public question, or both, the ballot shall be placed in a secure envelope. Upon completion and signing in the voter's handwriting of the certificate sent to the voter pursuant to section 8 of P.L. 1976, c.23 9C.19:59-8), it shall be placed in the same envelope as the voted ballot. The envelope shall then be sealed securely and sent immediately by air mail to the appropriate county board of elections in this State.

c. Notwithstanding the provisions of subsections a. and b. of this section, a copy of a voted overseas ballot may be transmitted by electronic means to the appropriate county board of elections in this State. Such a ballot shall be subject to the provisions of sections 3 and 4 of P.L. 1995, c. 195 (C.19:59-14 and C.19:59-15).

COMMENT

Although this provision is not substantially changed from current law, language is added to accommodate voting for a public question on the ballot.

**19:59-11. Counting ballots.**

a. Upon receipt of each overseas ballot, other than a ballot which had been sent by electronic means to an overseas voter, the signature on the certificate on the inner envelope shall be compared to that on the person's application.

b. All ballots, whether originally sent to an overseas voter by air mail or electronic means, shall be approved, disapproved, processed, counted and disputes in connection therewith shall be handled in the same manner as is applicable to other absentee ballots.

c. No ballot received after the time designated for the closing of the polls shall be counted.

COMMENT

Subsections are added. No other changes are made to this section.

**19:59-12. Request for overseas ballot for all elections during a calendar year.**

An overseas voter may request, on any application form used, an overseas ballot for all elections held during the calendar year in which the request is made. Any instructions sent to an applicant pursuant to section 5 of P.L. 1976, c.23 (C.19:59-5) shall inform the applicant that such a request may be made. If such a request is made, an overseas ballot shall be sent in a timely manner to the voter for all such elections and by the transmission method first requested by the voter unless the voter instructs otherwise.

COMMENT

Although this provision is substantially unchanged from current law, the term "election" is now defined in section 19:59-2. The language added is derived from subsection b. of Section 15 of the Uniform Military and Overseas Voters Act (UMOVA).

**19:59-13. Rules and regulations.**

To effectuate the purposes of this act, P.L. 1976, c. 23 (C.19:59-1 et seq.), and its administration, the Secretary of State is authorized to promulgate such rules and regulations as ~~he~~ the Secretary deems necessary and desirable.

COMMENT

Changes are made to eliminate any gender specific references.



**19:59-14. Voting by electronic means.**

Notwithstanding any law, rule or regulation to the contrary, a copy of a voted overseas ballot or of a voted federal write-in absentee ballot which is transmitted by electronic means to the appropriate county board of elections in this State shall be considered valid and counted if it:

- a. is from a qualified voter;
- b. has been transmitted to the appropriate county board of elections no later than the time designated by law for the closing of the polls on that day; and
- c. is accompanied by the following statement, which shall be certified by the voter's signature: "I understand that by transmitting by electronic means a copy of my voted ballot I am voluntarily waiving my right to a secret ballot. At the same time, I pledge to place the original voted ballot in a secure envelope, together with any other required certification, and send the documents immediately by air mail to the appropriate county board of elections."

COMMENT

No changes are made to this section.

**19:59-15. Original ballot of person voting by electronic means to be sent by airmail to county board of elections; duties of board regarding electronic or faxed ballots.**

a. Immediately after a copy of the voted overseas ballot or federal write-in absentee ballot has been transmitted by electronic means to the appropriate county board of elections, as permitted pursuant to section 3 of P.L. 1995, c. 195 (C.19:59-14), the overseas voter shall place the original voted ballot in a secure envelope, together with a certificate substantially the same as provided for in section 9 of P.L. 1976, c. 23 (C.19:59-9), and send the documents by air mail to the appropriate county board of elections.

b. All copies of voted ballots received by electronic means shall be approved, disapproved, processed and counted, and disputes in connection therewith shall be handled, in the same manner as is applicable to other absentee ballots. No ballot received after the time designated for the closing of the polls shall be counted.

c. The county board of elections shall take all necessary precautions to preserve the security of the ballot materials and specifically shall ensure that the vote cast by a voter using a ballot transmitted by electronic means is not revealed, except to the extent necessary by law or judicial determination. Upon the completion of all inspections of a ballot transmitted by electronic means required by law, the board or any employee thereof acting under its direction shall promptly separate the waiver certification from the ballot transmitted by electronic means. Any person handling such a ballot shall not identify the votes cast by any voter, except upon judicial determination.

d. Prior to certification of the results of the election, the county board shall:

(1) compare the information on the copy transmitted by electronic means of each voted ballot with the same on the original voted ballot sent by air mail by the voter who transmitted to the county board a copy of the voted ballot by electronic means, and the signature on the statement received by electronic means with the signature on the certificate received by air mail; and

(2) ascertain whether an original voted ballot has been received for each copy of a voted ballot received by electronic means and counted.

Whenever the particulars of the copy of a voted ballot transmitted by electronic means do not conform exactly with the particulars of the original voted ballot sent by air mail to the county board afterwards by that voter and whenever an original voted ballot has not been received which corresponds to a copy of a voted ballot transmitted by electronic means which has been received and counted by the county board, those ballots and all other pertinent documents and information relative to those ballots shall be turned over to the superintendent of elections in counties having a superintendent and the prosecutor in all other counties for further investigation and action.

e. Within 30 days after the election, the county board shall gather and keep together the copy of the voted ballot transmitted by electronic means, the certified statement and the original voted ballot sent by air mail of each voter who transmitted a copy of a voted ballot by electronic means. Those ballots needed for an investigation conducted by the superintendent of elections or the county prosecutor, as the case may be, or by any other law enforcement official shall be returned to the county board as soon as practicable after the conclusion of an investigation. All ballots and documents relative

to a copy of a voted ballot transmitted by electronic means and received by the county board shall be retained by it for a period of one year following the day of the election. The superintendent of elections in counties having a superintendent and the prosecutor in all other counties shall have the authority to impound all such documents whenever the superintendent or prosecutor shall deem such action necessary.

COMMENT

No changes are made to this section.

**19:59-16. Information provided to overseas voters.**

For the purpose of complying with the federal “Uniformed and Overseas Citizens Absentee Voting Act,” 42 U.S.C. s. 1973ff-1 et seq., the office of the Secretary of State shall:

a. be designated as the single State office responsible for providing information to all overseas voters who wish to register to vote or vote in any jurisdiction in the State with respect to voter registration procedures and vote by mail procedures to be used by overseas voters for all elections for federal offices;

b. work with the federal Election Assistance Commission and the federal Department of Defense to develop standards to report data on the number of overseas voter ballots transmitted and received by mail or electronic means pursuant to the “Overseas Residents Absentee Voting Law,” P.L.1976, c.23 (C.19:59-1 et seq.) and section 7 of P.L.2004, c.88 (C.19:61-7); and

c. provide such additional information relating to voting by overseas voters from this State as the Department of Defense determines is necessary.

COMMENT

No changes are made to this section.

**19:59-17. Use of voter’s electronic address.**

An electronic address provided by an overseas voter to the county clerk or the Secretary of State may not be made available to the public or any individual or organization other than an authorized agent of the county clerk or the Secretary of State and is exempt from disclosure under the Open Public Records Act, N.J.S. 47:1A-10. The address may be used only for official communication with the voter about the voting

process, including transmitting ballots and election materials if the voter has requested electronic transmission, and verifying the voter’s mailing address and physical location. The request for an electronic address shall describe the purposes for which the electronic address may be used and include a statement that any other use or disclosure of the electronic address is prohibited.

COMMENT

This section is new and adopted substantially in the form set forth in subsection a. of Section 15 of the Uniform Military and Overseas Voters Act (UMOVA).

**19:59-18. Nonsubstantive voter mistake or omission.**

a. If a voter’s mistake or omission in the completion of a document under this act does not prevent a determination of whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this act. In the case of a write-in ballot authorized by this act or a vote for a write-in candidate on a regular ballot, if the intention of the voter is discernable in accordance with this act, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

b. This section shall be applied consistent with the requirements of section 19:59-15d.

COMMENT

This section is new and adopted substantially in the form set forth in subsection a. of Section 17 of the Uniform Military and Overseas Voters Act (UMOVA). Subsection b. is added to clarify that despite this new section, under section 19:59-15d., an electronically transmitted voted ballot still must conform “exactly with the particulars of the original voted ballot sent by air mail to the county board”. The addition of this section to current law is in no way intended to contravene the requirements of current section 19:59-15 that the electronically transmitted voted ballot and the original paper voted ballot conform precisely to each other.

**19:59-19. Equitable relief.**

A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforcement of, this act on application by (1) a covered voter alleging a grievance under this act; or (2) an election official in this State.

COMMENT

This section is new and adopted substantially in the form set forth in Section 18 of the Uniform Military and Overseas Voters Act (UMOVA).

**19:59-20. Effective date of amendments.**

The amendments to this shall take effect on . . . . . [three months after their enactment].

COMMENT

This section is new and suggests a three-month window from the date of enactment of the revised sections to their effective date so as to provide the Division of Elections an opportunity to change any forms or instructions that the revisions may make necessary.